

Minutes of the Planning Commission meeting held on Thursday, October 7, 2010, at 6:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Sheri Van Bibber, Vice-Chair
Ray Black
Tim Taylor
Karen Daniels
Jeff Evans
Tim Tingey, Community & Economic Development Director
Ray Christensen, Senior Planner
G.L. Critchfield, Deputy City Attorney
Citizens

Excused: Jim Harland, Chair
Kurtis Aoki

The Staff Review meeting was held from 6:00 to 6:30 p.m. The Planning Commission members briefly reviewed the applications on the agenda. An audio recording of this is available at the Murray City Community and Economic Development Department.

Ms. Van Bibber opened the meeting and welcomed those present.

APPROVAL OF MINUTES

Karen Daniels made a motion to approve the minutes from September 16, 2010. Seconded by Tim Taylor.

A voice vote was made. The motion passed, 5-0.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

APPROVAL OF FINDINGS OF FACT

Jeff Evans made a motion to approve the Findings of Fact for Conditional Use Permits for: Airlogix, Flower Patch, Clearwire Wireless, and Miller Family Real Estate, from the September 16, 2010 meeting. Seconded by Karen Daniels.

A voice vote was made. The motion passed, 5-0.

COSTCO WHOLESALE – 5201 South Intermountain Drive – Project #10-206

Alexia Iniques was the applicant present to represent this request. Ray Christensen reviewed the location and request for Conditional Use Permit for a 1500-gallon underground fuel storage tank with associated above ground dispenser and venting for the Costco property addressed 5201 South Intermountain Drive. Municipal Code Ordinance 17.160.030 allows fuel stations within the C-D-C zoning district subject to Conditional Use Permit approval. The proposed underground fuel storage tank with associated above ground dispenser and venting is to be used for a fuel additive for the gasoline product sold at the existing Costco fuel station. The fuel additive is an enhancement to improve fuel efficiency and engine performance. An attendant will

use the dispenser nozzle to fill a fuel caddy with 3-5 gallons of liquid additive. The fuel caddy will be used to dispense the liquid additive into the fuel tanks. This fuel additive facility is not removing or adding parking stalls to the site. The site has adequate existing parking for the Costco business which is in compliance with the parking regulations. The structures meet the setback requirements for the C-D-C zone district and the site is currently landscaped to meet the zoning regulations. The changes to the existing landscaping where the additive fuel station will be located will require city forester approval. Based on the information presented in this report, applications materials submitted and the site review, staff recommends approval subject to conditions.

Tim Taylor commented that any hazardous materials will be dealt with through the additional development permit as required by the SSOD (Smelter Site Overlay District). Mr. Christensen responded in the affirmative. He stated that the development permit is required prior to installation of the gasoline tanks.

Alexia Iniques, representative of Costco Wholesale, stated that the fuel additive will be added to the Costco gasoline station. She stated this is one of the first 50 pilot site locations in the United States. She explained that it is a fuel additive that enhances engine performance and every Chevron or Shell gasoline stations have this additive, but there is an additional charge for the additive. She stated that there will not be additional charges at Costco and the additive will be included with the regular gasoline cost as an added benefit for their customers. Ms. Iniques indicated she has reviewed the staff recommendations and will comply.

Ray Black asked if the additive will be included in the gasoline or if it is a separate dispenser. Mr. Iniques responded that the Costco employee who handles the gasoline will be the one to determining how much additive to drop into the existing tanks. When the fuel tanker delivers the gasoline, the attendant will calculate the amount of additive to be added to the 30,000 gallon tanks (approximately 3-5 gallons).

No comments were made by the public.

Ray Black made a motion to approve a Conditional Use Permit for Costco for fuel storage tanks at 5201 South Intermountain Drive subject to the following conditions:

1. The project shall meet all applicable building code standards.
2. The project shall meet all current fire codes.
3. Prior to issuance of the building permit, apply for and complete all applicable requirements of the Smelter Site Overlay District Development Permit application.
4. With the changes to the site and landscaping, a formal landscaping plan meeting the requirements of Chapter 17.68 of the Murray Municipal Code shall be submitted with the building permit and be approved by the Murray City Forester and installed as approved prior to occupancy.

5. All trash containers on the site shall be screened as required by Chapter 17.76.170.
6. The site shall meet the requirements of Chapter 17.72 for aisle width and parking stall length with the new facility.
7. The project shall meet the requirements of the Murray City Engineer for drainage.

Seconded by Karen Daniels.

Call vote recorded by Ray Christensen.

A _____ Mr. Taylor
A _____ Ms. Van Bibber
A _____ Mr. Evans
A _____ Ms. Daniels
A _____ Mr. Black

Motion passed, 5-0.

KENDYL & KARL BENCH – 39 West 5878 South – Project #10-210

Kendyl and Karl Bench were the applicants present to represent this request. Ray Christensen reviewed the location and request for Conditional Use Permit approval for an accessory dwelling unit (ADU) within an existing dwelling unit. The proposed accessory dwelling unit will contain two bedrooms and is approximately 981 square feet in size with access from the rear of the existing dwelling. The accessory dwelling unit ordinance allows for ADU's in residential zones subject to Planning Commission approval and compliance with certain development standards. A discussion of compliance with the applicable standards is included below. In addition to the standards for development, approval of an accessory dwelling unit requires submittal of evidence that the unit is the principal residence of the owner and an affidavit stating that the owner of the property will live in either the principal or accessory unit. The house has a one car garage and a carport with additional vehicle parking on the driveway. The standards for accessory dwelling units require two additional off-street parking spaces besides those required for the principal unit, and in no case shall be less than four spaces. The submitted plan shows adequate space available for off-street parking to accommodate the required four spaces. The ordinance limits the size of accessory dwelling units to 1,000 square feet. The floor plan submitted by the applicant indicates that the accessory dwelling will total approximately 981 square feet. The dwelling meets the required setbacks for the R-1-8 residential zone with the exception of an addition that has been constructed within 10 feet of the rear property line. County records indicate that the existing residence was constructed in 1956. The minimum rear setback for residences constructed prior to April 7, 1987 is 15 feet. The applicant has indicated that the addition will be modified to meet the required setback prior to occupancy of the accessory dwelling unit. A building permit will be required for the proposed modification. Access to the lot is from 5878 South Street. No new driveways are proposed. Based on the information presented in this report, applications materials submitted and the site review, staff recommends approval

subject conditions.

Karen Daniel asked what happens if the owners of the property sell the property and no longer occupy the home and if the conditional use permit continues to the next owner. Mr. Christensen responded that a new owner's affidavit would be required from the owners to be recorded with the County if they wished to continue the ADU.

Tim Taylor clarified that in order to continue this Conditional Use Permit approval if the property sells, the new owners would simply record the Owners Affidavit with the county and they would not need to appear before the Planning Commission. Mr. Christensen responded in the affirmative. If a new Owners Affidavit is not recorded but the use is continued with a new owner, it would then become an enforcement issue. This situation should be handled with the title company upon sale of the property because the document is to be recorded against the property.

Tim Tingey clarified that upon sale and closing of the property, a new recording of the Owners Affidavit would be required at that time. He stated that there is also an Authorization Fee that would need to be paid for the new property owner.

Karl Bench, 39 West 5878 South, stated he does not intend to sell the property and enjoys living here in Murray. He stated that he is an electrician and they wish to have the accessory dwelling unit to provide extra income. Mr. Bench stated he has reviewed the staff recommendations and will comply.

No comments were made by the public.

Tim Taylor made a motion to grant Conditional Use Permit approval for an Accessory Dwelling Unit for Karl and Kendyl Bench at 39 West 5878 South subject to the following conditions:

1. The project shall meet all applicable building code standards and shall meet all current fire codes. Dwellings shall be separated from each other by wall and /or floor assemblies having not less than one-hour fire resistive construction (See IRC sec. R317.1, R317.1.1. etc.), to the satisfaction of the City Building Official.
2. A portion of the addition on the rear of the existing residence is required to be removed in order to meet rear yard setback requirements. A separate permit will be required to remove a portion of the rear covered porch/patio.
3. The applicant shall submit evidence that the property is their principal residence and shall submit an affidavit stating that they are the owner of the property and that they will live in either the primary or accessory unit as their principal residence. The affidavit shall also indicate that the second unit is an accessory unit and that a future purchaser of the property will be required to reauthorize the accessory dwelling in order to continue the use. Once the affidavit has been approved by City staff, it shall be recorded against the property. A copy of the recorded affidavit shall be provided to Community and Economic Development Staff.

4. Separate utility meters shall not be allowed.
5. Meet all Murray Power Department and Water and Sewer Department requirements.

Seconded by Karen Daniels.

Call vote recorded by Ray Christensen.

A _____ Mr. Taylor
A _____ Ms. Van Bibber
A _____ Mr. Evans
A _____ Ms. Daniels
A _____ Mr. Black

Motion passed, 5-0.

BRIDGES ON VINE P.U.D. – 940 East Vine Street – Project #10-209

Chris Gamvroulas was the applicant present to represent this request. Tim Tingey reviewed the location and request for an amendment to the Bridges on Vine P.U.D. The applicant is requesting an amendment to the Bridges On Vine Planned Unit Development to allow window wells within the side yard setbacks in the residential development located at 940 East Vine Street Lots 1- 11. The Planning Commission approved the Bridges on Vine P.U.D. on January 3, 2008 with the minimum setbacks: Front Yard -18 ft., Rear Yard-15 ft., Side Yard- 5 ft., Side Yard Corner Lot- 18 ft. Ivory Homes purchased the property earlier this year and applied to the Planning Commission for the May 20, 2010 meeting to amend the house plans, architectural design, floor plans, building elevations, building materials, and changes to the perimeter fencing. With the Conditional Use Permit and P.U.D. approval in January 2008, the 5 foot minimum side setbacks were approved and the 5 foot setbacks were also approved for utility easements. The purpose of the minimum setbacks and utility easement provisions was to ensure there would be open space and that there would be only limited encroachments into the easements with structures such as bay windows, window wells, fireplace structures, etc. The easements were to be used by utility companies and for open access into the side yards. The applicant is proposing to install window wells in the side yard setbacks. With the current side yard setbacks of five feet it is likely that the window wells would encroach up to an additional three feet which would leave a setback of only two feet for the side yard areas. The intent of having setbacks is to maintain adequate space between existing structures for safety issues including fire and building code requirements. They are also established to enhance aesthetics by providing open space around property that allows for a buffer between existing properties. These areas are typically landscaped and provide a more pleasing environment for a residential neighborhood. In Murray, the setback standards for interior lot side yards in residentially zoned areas are a minimum of eight feet and both sides must total at least 20 feet (which provides 8 and 12 foot minimum side yard setbacks for new construction). However, in Planned Unit Developments (PUD's) setbacks may be modified by the Planning Commission with the provision of other required amenities to enhance a development. In the Bridges

On Vine PUD the Planning Commission allowed for a reduction of the setbacks including five foot interior side yard setbacks. In the past, there have been circumstances where the City has approved window wells in five foot side yard setback areas for PUD's which have encroached 2-3 feet. At times this has occurred when window wells were not specifically depicted on plans yet were installed by the builders and not properly evaluated in the review process. The encroachment into the setbacks relates affects three items: 1- convenience which relates to property owners and livability and better access to get around; 2- the five foot area is in a utility easement which is a convenience for utility companies to locate their utilities and maintain those utilities; 3- aesthetics and open space which is important. Based on all the information and research, the staff recommends denial of the request for a reduction in setbacks. However if the Planning Commission makes a decision to approve the proposal, the conditions described in the staff report would apply.

Chris Gamvroulas, 978 East Woodoak Lane, stated he is representing Ivory Development. Mr. Gamvroulas stated that Ivory Development would not have purchased this project if they were not able to have basements in the homes and the 3 foot window wells are critical to being able to have bedrooms in the basements. He stated that at a previous meeting they discussed having basements in the homes and the FEMA flood plain requirements. He stated that it does not make sense that window well cannot be located in the setbacks. He cited the example where a typical 8 foot setback would in essence be 11 foot setback if the window well is not permitted to be in the setback. Mr. Gamvroulas had a power point presentation that showed the subdivision and a home being 80% complete. He stated that they have a buyer for this particular home and is contingent upon having basement windows. He stated that they called the city's building department and inquired about getting window wells on the side of the home and were told it would be permissible. Subsequently they have the concrete poured in the back area of the home. If they are not allowed to have the window wells on the side of this home they will be tearing out the newly poured concrete to install new window wells at the back of the home.

Chris Gamvroulas stated that Ivory Development has torn out all the chain link fencing along the creek, restored all the landscaping and replaced all the dead trees, installed new 6 foot black vinyl coated chain link fence along the creek, removed the junk from the property. They retained the trees along the creek and the rest of the trees were either dead or dying and they had an arborist look at the trees. They have installed the perimeter fencing.

Chris Gamvroulas stated there are no other communities that do not allow the window wells to be in the setback area. He stated that there is nothing in the city's ordinance that regulates this type of situation. He showed some photos of the Creek Bend at Vine P.U.D. in Murray City that was developed by Prince Development that has 5-foot side yard setbacks and 3-foot window wells. He stated that the ordinance allows encroachment into the side yards of 2½ feet but these window wells are 3 feet in order to accommodate access and convenience. He showed maps on the flood plain areas requiring flood insurance and setbacks. Mr. Gamvroulas stated that people build basements to add space to their homes and more livable area, which includes bedrooms. Per the building code, an egress window which is in a bedroom is 36 inches and a non-egress window which would be in another area such as a family

room is 30 inches. Typically the back of the home has the living area and the sides are the bedrooms. He stated that this issue will not be an issue for every home. He stated that they have obtained a building permit on lot #10 but that home does not have window wells that encroach into the side yard. However, there will be some homes that maximize the building pocket and the window wells encroach into the side yards by 3 feet.

Chris Gamvroulas clarified that the staff report indicates that they are requesting a reduction in the setback and that is not their request. The request of Ivory Development is to have window wells in the setbacks and this is not specific in the city's ordinance and they have applied for an amendment at the request of the planning staff to have the Planning Commission review this issue. He stated that this request, if treated well, does not diminish the open space nor does it negatively impact a neighbor who may potentially have the same situation. He stated that the staff report indicates that the city engineer indicates the window wells haven't been restricted in easements up until now and utilities can go under the window wells or between them. He stated that he met with the city's fire marshal who indicated that there were no problems with this issue and is not a safety issue. He stated that this P.U.D. has been around for 3 years and to change the regulations at this point retroactively with regard to the window wells would be inappropriate.

Karen Daniels asked about the existing home that is in question being 80% complete. She asked if the potential buyer wishes to have basement bedrooms that will require cutting out window wells. Mr. Gamvroulas responded in the affirmative. He explained that they would need to cut out the concrete to install a window and window well on the south side of the home and there will be 13 feet between the adjacent home.

Karen Daniels asked about the window wells on the home in question. Mr. Gamvroulas responded the window wells will only be on the south side of the home in order to accommodate three bedrooms in the basement. The offer to purchase this home is contingent upon being able to have three bedrooms in the basement because there is only one large bedroom on the main floor. He stated that there were originally only 3 house plans for this community which maximized the building pocket for the lots, but enough work had not been completed on the four lots to understand what the FEMA flood plain meant with respect to the basement build out.

Tim Taylor commented that the existing lots can have basements and window wells, but not bedrooms in the basements without this amendment to the window wells for an additional 6 inches. Mr. Gamvroulas stated that they would rather restrict side yard fencing rather than restrict the window wells which allow bedroom basements. He stated that the limitation of a blanket denial for basement bedroom window wells is unreasonable for this development. He stated that the staff report doesn't address the fact that they can have 2.5 foot window wells, but not a 3 foot window well which is specifically required for bedroom safety egress. Mr. Taylor and Mr. Tingey indicated that it does not specify encroachments in the staff report.

No comments were made by the public.

Karen Daniels clarified that the 5-foot side yard setback is basically the easement for

each home which ultimately results in a 10-foot utility easement between two homes.

Jeff Evans asked how much space is actually utilized within that 10-foot utility easement between two adjacent homes. Tim Tingey responded that it may vary and sometimes utilities are not located there for years and at other times the utilities are located there at the beginning of the development.

Tim Tingey complimented Ivory Development on their work for this project. He reiterated that the code does define what a setback is and it defines what a structure is. He stated he has interpreted the code that the window well is part of the structure. He stated this is part of the structure and is defined in the code and for Mr. Gamvroulas to comment that it is not defined in the city code is incorrect. There is not a section that specifically addresses window wells, but a setback and structure are specifically defined and he has firmly interpreted that a window well is part of the structure. Therefore the setback is an issue. Mr. Tingey stated the code allows for encroachments into the setback and he has discussed with Mr. Gamvroulas that encroachments are allowed and that a 2.5-foot non-egress window well is allowed and would have been approved without further review by the commission. A 3-foot egress window well is not allowed in a side yard setback, but it is allowed in the rear yard and the code allows an encroachment of up to 4 feet in the rear and front yard setbacks and these issues are defined in the code. Mr. Tingey stated that he does not think it is a good idea to restrict fences around the homes and that future home owners should be able to decide whether to build or not build a fence if it meets the code standards.

Tim Taylor stated that the window well issue is basically an issue over 6 inches (2.5-foot non-egress window well as opposed to a 3-foot egress window well). He stated that it may be a reasonable solution to restrict side yard fences where there are two 3-foot window wells. Mr. Tingey responded that it could be considered, but he indicated that it would not allow the opportunity for future homeowners to have the flexibility to decide.

Tim Taylor asked about the comment made by Mr. Gamvroulas indicating that other cities don't interpret the code similarly. Tim Tingey responded that he has not had discussions with other cities on this subject, but he is confident about the city's definition on setbacks and structures.

Sheri Van Bibber commented that this proposal is unique and that there may not be any negative impacts to the surrounding area, however, the easements are in place for certain reasons. She stated the fact that the contractor was told to go ahead with the project verbally over the phone is another issue.

Ray Black asked about the verbal approval given to go ahead for this project. Tim Tingey responded that setbacks are governed by the zoning code and the building permit was applied for through the building department. The zoning office reviews the building permits for approval. Mr. Tingey stated that he was unaware of any approvals given over the phone but a permit was applied for to create a basement and there was no formal approval of a window well in the approval process. It was likely only related to the pouring of concrete in the back of the home. He said that the

window wells aren't in place at this time and is the reason for this review.

Sheri Van Bibber stated that the three issues to consider as indicated by Mr. Tingey's presentation are: convenience, property owners and aesthetics with open space.

She asked how many lots will be impacted with this window well issue. Mr.

Gamvroulas responded that half of the lots will be impacted. He stated this is not going to be a situation where they are at maximum size with the 10-foot separation between homes, but it is going to be an issue when the home owner wants to move the home over to the one side to accommodate a three car garage or an RV pad, etc.

Chris Gamvroulas asked if the Discovery Cove P.U.D. can have a 3-foot window well when the setbacks for that subdivision are 8-foot side yards, and that it should be allowed in this project. He asked that this subdivision be able to continue to install the 3-foot window wells and that possibly a change in interpretation begin with a new subdivision. He stated that Ivory Development did not purchase this project in order to do something bad or diminish the neighborhood and it is important for them to have the flexibility that they thought they bought. He stated that he is happy to incorporate into the Restrictive Covenants where the 5-foot setback is applied that the fencing be restricted in some fashion.

Karen Daniels stated that when she thinks of a 5-foot setback, she thinks of a 5-foot clear setback and not a 3-foot window well within the 5-foot setback. Mr. Gamvroulas responded that is not a practice to have the window well outside of the setback as demonstrated by the Prince Development photos shown earlier.

Jeff Evans asked if it is possible to reach any middle ground on this issue. Karen Daniels asked if lot #11, which is built, could have the window well encroachment, but the other vacant lots not have the window well encroachment. Mr. Taylor suggested that the two existing home foundations (lots #10 & #11) be allowed to have the window well encroachment in the side yard as requested, but the future home must have the window wells outside of the setback area.

Jeff Evans suggested if there is window wells on the side yard of one house, the adjacent house must be designed so as not to have the window well encroachment. Ray Black concurred. Ray Black clarified that if there is a 3-foot window well encroachment on one lot then a possibility would be to not allow a window well on the adjacent lot; however, the code indicates that there may be an encroachment of 2 1/2 feet in side yard setbacks on residential lots which is only 6 inches in difference. Six inches may make a difference when a homeowner is trying to run a lawnmower along the side yard. Mr. Gamvroulas stated that very few home owners plant sod along the side yards where the setback is this narrow because it is difficult to mow 2 feet of sod on a side yard.

Ray Black asked for legal advice on this item. G.L. Critchfield, Deputy City Attorney, responded that he views this as how an ordinance is being challenged rather than an administrative decision being challenged. He stated that the legislative body, who decides on the ordinances, has a lot of discretion in their intent with an ordinance. The administrative body does not have a lot of discretion and this is an administrative level issue. The question is, did the city abuse their discretion where it is not crystal

clear in an ordinance regarding the window wells. As a general rule, he is much more comfortable defending an ordinance than an administrative decision. Mr. Critchfield stated that the commission needs to look at the ordinance to determine if it directs them as to what a window well should be, i.e. if the city council says you can or cannot have something, that is a very clear ordinance. After further comment by Mr. Black, Mr. Critchfield provided additional clarification and stated that the commission is looking at an interpretation by staff saying it does apply and Ivory Development is saying it doesn't apply.

Ray Black commented the issue is a 3-foot window well is required per building codes for egress safety codes as opposed to a 2½-foot window well that does not meet egress safety codes.

Jeff Evans stated that based on the previous P.U.D.'s done in the city and the examples shown of this exact situation already in place, that it makes sense to approve the amendment for Bridges on Vine P.U.D. as requested. He suggested that future P.U.D. approvals be more specific in regards to window wells encroaching in the setback.

Tim Taylor stated the code defines a setback and defines a structure and Mr. Tingey is making an administrative decision that a 3-foot window well is a part of the structure and therefore cannot encroach into the side yard setback. Mr. Tingey concurred. Mr. Tingey stated if this were a typical subdivision where there are defined setbacks in the code and encroachments allowed in that code then it would be an issue determined by the Board of Adjustment as an appeal to an interpretation or a variance. However, this is a P.U.D. and there is some discretion allowed by the Planning Commission on setbacks which is why this is being reviewed by the Commission once again.

Jeff Evans stated that this is an issue of interpretation and the project has already started. He stated that the city has interpreted the window wells to be allowed up until this point. He suggested that future projects will be handled very specifically in regards to the window wells, etc. being allowed or not allowed in the encroachment setbacks.

Jeff Evans made a motion to grant an amendment to the Bridges on Vine P.U.D. located at approximately 940 East Vine Street, lots #1-11, to allow a maximum of a 3-foot window well within the side yard setbacks subject to the following conditions:

1. The building official shall require all structures to comply with building and fire code regulations;
2. Comply with all fire department requirements;
3. Meet all applicable Public Services requirements for encroachment into a utility easement.

Seconded by Karen Daniels.

Call vote recorded by Ray Christensen.

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A Ms. Daniels

A Mr. Black

N Mr. Taylor

A Ms. Van Bibber

A Mr. Evans

Motion passed, 4-1.

Meeting adjourned.

Tim Tingey, Director
Community and Economic Development